IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6607 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJ AND RAJ SYNTHETICS P LTD

Versus

MUNICIPAL CORPORATION OF THE CITY AHMEDABAD

Appearance:

1. Special Civil Application No. 6607 of 1992

MR RM VIN for Petitioner No. 1

MR AG SHAIKH for Petitioner No. 2

MR NAGARKAR for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/02/2002

ORAL JUDGEMENT

1. Raj and Raj Synthetics Pvt. Ltd.-petitioner has filed this petition for issue of writ of mandamus, or writ of prohibition or writ of certiorari or a direction striking down the action of the respondent, its vigilance

Officer and the Octroi Staff in freezing 164 packed cartons and 27 loose cartons immobilised as per their order dated 12.8.1992. It is further prayed that the respondent Corporation and its staff be restrained from entering any premises of petitioner No. 1 or the other members of the petitioner and attach, freeze or seize any goods. By way of amendment it is further prayed that this court may also restrain the respondent Corporation and its officers and servants from preventing or obstructing petitioner No. 2 company from selling or otherwise dealing or disposing of goods of 164 cartoons and 27 loose cartons described in Annexure-B.

2. The facts giving rise to this petition are as under:

2.1 Petitioner No. 1 is a Private Limited Company which deals on a large scale in Synthetic yarn and for that purpose it not only imports but purchases locally quantity of synthetic yarn and also does business of selling and purchasing the same. Petitioner No. 2 is an Association of Merchants and Dealers of synthetic yarn. It has been stated that on 12.8.1992 the Vigilance Officer Shri Pranlal Patel of Octroi and other members of the octroi staff came to the premises of petitioner No. 1 comprising shop as well as godown situated at 1, Umiya Estate, Bhilwara, Amraiwadi, Ahmedabad and started making inquiries. At that time one Shri Maheshbhai Agarwal, accountant of petitioner No. 1 Company was present. He was questioned and asked to produce record to prove the payment of octroi on the goods lying in the above mentioned premises. There were 164 cartons packed and about 27 loose cartons. These were all reprocessed and finished materials out of rejected second quality synthetic yarn. These cartons of synthetic yarn were not imported materials and therefore they were not liable for payment of octroi duty and it is irrelevant on the part of the Vigilance Officer and other octroi staff to ask petitioner No. 1 Company whether the octroi duty was paid on the same or not. The Vigilance Officer and the octroi staff ordered petitioner No. 1 Company not to move, shift or transfer the said goods till according to them the question of octroi was not cleared. To that effect they extracted a writing from the accountant and compelled him to sign the same, the body of writing being in the hands of the member of the octroi staff and is also produced in Annexure-B. According to the petitioner the action of the Vigilance Officer and the Octroi staff is highly arbitrary, without any semblance of authority or power and in clear violation of Rules and law. In this regard the petitioner has relied on the provisions

of the Bombay Provincial Municipal Corporations Act and the Rules of the Corporation. Rule 9 provides power to examine articles liable to octroi. Rule 10 contains special provision in regard to non-payment of octroi. Rule 11 provides for issue of requisition notice. The petitioners have challenged the aforesaid action of the authorities under the provisions of the Act.

3. On behalf of the respondent Corporation Mr. Nagarkar, learned advocate, appeared and stated that the contention raised by the learned counsel for the petitioner is not well founded. He submitted that the issue raised by the learned counsel for the petitioner is covered by the judgement of this court in the case of MAHENDRA TUBE SUPPLIERS VS. MUNICIPAL CORPORATION AIR 2002 Gujarat 4. After considering the provisions of the Act and Rules and after considering various judgements of this court, in para 17 this court has held as under:-

"In our considered opinion, the arguments advanced on behalf of the petitioners proceed on a legal misconception and in ignorance of various provisions of law quoted above. The power to impose octroi duty includes power to make provisions to prevent evasion. For the above purpose, specific provision has been made in S. 128 to present a bill and recover octroi duty on the spot either at the octroi naka or at any other place. Section 387 is a general power conferred on the Commissioner and also his delegates by order of a delegation to enter premises for inspection, if found necessary, for the purposes of the Act or in (pursuance of any provisions of the Act, Rules or By-laws. This enables the Authorities, on a reasonable belief of the evasion, to check the alleged illegal imported goods, may be, stored in the business premises or any other place of the importer. Detailed rules have been framed like Rule 29 authorising the Officers to detain goods for the purpose of checking evasion of octroi duty, rule 33 specifically empowers demand of octroi by presenting a bill. Specific power of seizure of goods for non-payment of octroi by presenting a bill. Specific power of seizure of goods for non-payment of octroi is to be found in rule 49. Such power of inspection, seizure of goods to demand taxes is to be found in various taxing provisions. The Bombay Provincial Municipal Corporations Act was brought into force in the year 1949 and these provisions have worked

satisfactorily for such a long period. It cannot be accepted that the provisions containing powers of inspection, search and seizure of goods and making recovery by presenting a bill are provisions which confer any blanket or arbitrary power on the Authorities of the Corporation and make, therefore, a serious inroad into the fundamental rights of the petitioners to carry on their trade and occupation. Such extraordinary powers are necessary to be conferred on the Authorities to prevent and check evasion of octroi and for the purpose of due collection of octroi duty."

4. In my view in the light of the judgement of the Division Bench of this court, there is no substance in the contention raised by the learned counsel for the petitioner and therefore the petition is required to be rejected. The petition is rejected accordingly with no order as to costs. Rule is discharged.

(K.M. MEHTA, J)

(pkn)